

### **REMARKS**

This Amendment is responsive to the non-final Office Action mailed June 18, 2009. At the time of the Office Action, claim 1 was presented for examination.

With this Amendment, claim 1 has been cancelled, without prejudice, and new claims 68-87 have been added. Support for the new claims is found in the originally filed application. Accordingly, no new matter has been added to the application. Reexamination and reconsideration is respectfully requested.

### **35 U.S.C. §102 Rejections**

Claim 1 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Yates et al., U.S. Patent No. 5,810,811 ("Yates") in view of Schmidt, U.S. Patent No. 5,456,684 ("Schmidt").

Without acquiescing to the properness of the foregoing rejection, Applicant has cancelled claim 1, without prejudice, thus rendering any further discussion of the foregoing rejection against this claim moot. In turn, Applicant has added new independent claim 68, as well as dependent claims 69-87. The Applicant will now address the cited art in relation to new independent claim 68.

In review of Yates, Yates appears to teach various electrode arrangements in FIGS. 11-14 and 17-19. However, in review of the figures, none of the electrode arrangements appear to anticipate or make obvious independent claim 68.

Turning to the figures, FIGS. 11-14 and 19 do not appear to show the features of electrodes positioned for an electrical current from the electrodes to flow in tissue grasped between tissue grasping surfaces substantially parallel to the tissue grasping surfaces and across a width of the tissue grasping surfaces, *with the tissue grasping surfaces medial to the electrodes* as recited by claim 68. In FIGS 11-14 and 19, the tissue grasping surfaces do not appear to be medial relative to both electrodes.

Furthermore, with respect to remaining FIGS. 17 and 18 of Yates, the electrodes do not appear positioned for the recited electrical current to flow *across a width of the tissue grasping*

*surfaces.* In FIGS. 17 and 18, it appears, rather, that electrical current would flow longitudinally along a length of the electrodes 751, 752.

Moreover, with regards to the secondary reference, Schmidt is not understood by the Applicant to provide the missing teachings of Yates identified as set forth above.

Accordingly, the Applicant believes that it has been demonstrated that the claims herein define over the teachings of the cited reference. In view of the foregoing remarks, it is respectfully submitted that independent claim 68 is patentable over Yates in view of Schmidt. Allowance of independent claim 68, as well as the pending claims which depend directly or ultimately therefrom, is respectfully requested.

No claim fee is believed necessary as the number of claims does not exceed the total claims paid at the time of filing the application. However, in the event there are any fee deficiencies or additional fees are payable, please charge them (or credit any overpayment) to our Deposit Account 50-2121.

### **Double Patenting**

The double patenting rejection is believed to be rendered moot in light of the cancellation of claim 1.

### **SUMMARY**

Having dealt with all the rejections raised by the Examiner, it is respectfully submitted that the present application is in condition for allowance. Thus, early allowance is earnestly solicited.

In the event there are any fee deficiencies or additional fees are payable, please charge them (or credit any overpayment) to our Deposit Account No. 50-2121.

If the Examiner desires personal contact for further disposition of this case, the Examiner is invited to call the undersigned Attorney at 603.668.6560.

In the event there are any fees due, please charge them to our Deposit Account No. 50-2121.

**AMENDMENT**

Serial Number: 10/517,947

Filing Date: October 6, 2005

Title: FLUID-ASSISTED MEDICAL DEVICES, SYSTEMS AND METHODS

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Respectfully submitted,

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